

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 28 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FERNANDO ANTONIO ROMERO-
AVILA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-70430

Agency No. A72-992-545

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted October 21, 2005**
Pasadena, California

Before: PREGERSON and CLIFTON, Circuit Judges, and HICKS,*** District
Judge.

* This disposition is not appropriate for publication and may not be cited
to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Larry R. Hicks, United States District Court Judge for
the District of Nevada, sitting by designation.

Petitioner, Fernando Antonio Romero-Avila, challenges the BIA's denial of his motion to reconsider. We have jurisdiction under 8 U.S.C. § 1252(b)(1)-(2) and we affirm.

Romero-Avila claims that he was denied due process because he was not given proper notice before being ordered deported *in absentia*. The BIA declined to reconsider its decision not to reopen Romero-Avila's deportation proceedings on this basis. We review claims of due process violations de novo. Khup v. Ashcroft, 376 F.3d 898, 902 (9th Cir. 2004).

A person attempting to reopen deportation proceedings on due process grounds must show that his due process rights were violated and that he was substantially prejudiced by the violation. Larita-Martinez v. Immigration & Naturalization Serv., 220 F.3d 1092, 1095 (9th Cir. 2000) (citations omitted).

Romero-Avila was fifteen when he was personally issued an order to show cause, which detailed where and when his deportation hearing was to take place. The pertinent regulation only require special notice procedures for those under the age of fourteen. 8 C.F.R. § 103.5a(c) (1994). We find no violation of due process where the Service complied with the regulations at 8 C.F.R. § 103.5a(a)(2), (c) and notice was "reasonably calculated" to apprise Romero-Avila of his hearing.

Dobrota v. Immigration & Naturalization Serv., 311 F.3d 1206, 1210 (9th Cir. 2002) (citations omitted).

Even if there were a due process violation, Romero-Avila has not shown that he was eligible for any relief as of the date he was deported, and therefore has not shown substantial prejudice. Accordingly, the BIA's decision is AFFIRMED.